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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,401	02/16/2004	J. Mark Morrow	031599/260283	1618

826 7590 04/07/2006

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EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/780,401

Applicant(s)

MORROW, J. MARK

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 7-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,9-14,16-22 is/are rejected.
- 7) ☒ Claim(s) 8 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Drawings***

1. The new drawing (Figure 5) was received on 2/13/2006. This drawing is approved by the Examiner.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 17 is finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 17, the phrase "a drinking aperture..." appears a double recitation of claim 10.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 7, 9, 10, 11, 16-20 and 22 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson (5,529,179) in view of Dischler (6,564,934) and Castillo (6,412,526). Hanson discloses a container assembly comprising a container (11) having a top edge encircling a top opening of the container and a cap/overcap (10) having a rim (18) configured to engage the top edge of the container and a top wall (15) defining a storage

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compartment (17) in an underside of the top wall. The top wall having a substantially horizontal annular portion radially inward of the rim and surrounding the storage compartment, a drinking aperture (24) adapted to receive a straw. Hanson also discloses the other claimed limitations except for the storage compartment comprises a membrane being removably attached to the underside of the top wall of the cap covering the storage compartment for sealing a product contained in the storage compartment and the drinking aperture being located radially outward of the membrane.

Dischler shows a container assembly in the embodiment of Figures 10 and 11 comprising a container (110) having a top opening and a cap/overcap (100) having a rim configured to engage a top edge of the container and a top wall (18) defining a storage compartment (102, 103) in an underside of the top wall and a membrane (22) attached to the underside of the top wall of the cap covering the storage compartment for sealing a product contained in the storage compartment. Castillo teaches a cap/overcap (210) comprising a compartment for holding a product and a membrane removably attached to an underside of the compartment for sealing the product in the compartment (Figure 2A).

It would have been obvious to one having ordinary skill in the art in view of Dischler and Castillo to modify the cap of Hanson so the storage compartment comprises a membrane attached to the underside of the top wall of the cap covering the storage compartment for sealing a product contained in the storage compartment as taught by Dischler to provide convenience for dispensing the product and the membrane is removably attached to the underside of the storage compartment for sealing a product contained in the storage compartment as taught by Castillo to allow the user to remove the membrane prior of attaching the cap to the container.

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As to claims 2 and 10, Hanson discloses a skirt extending downwardly from the rim (Figure 4).

As to claim 7, Dischler shows the storage compartment defined a domed portion. As to claims 9 and 16, Dischler shows the membrane formed from aluminum foil/impermeable to moisture.

As to claims 11, Dischler shows the skirt extended below a lowermost surface of the top wall of the cap.

6. Claims 12-14 and 21 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 11 and 20 above, and further in view of Reidinger et al. (6,311,860; hereinafter Reidinger'860). Hanson as modified further fails to show the skirt includes a plurality of spacers. Reidinger'860 shows a cap (30) for engaging a rim of a container comprising a skirt (36) having a plurality of spacers (42) extending along an inner surface of the skirt (Figure 2). It would have been obvious to one having ordinary skill in the art in view of Reidinger'860 to modify the cap of Hanson as modified so the skirt includes a plurality of spacers extending along an inner surface of the skirt for better securing the cap to the rim of the container.

***Allowable Subject Matter***

7. Claims 8 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Response to Arguments***

Applicant's arguments with respect to 2/13/2006 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP , 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

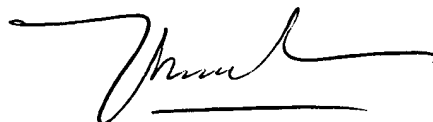
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb  
March 31, 2006



Luan K. Bui  
Primary Examiner  
Art Unit 3728



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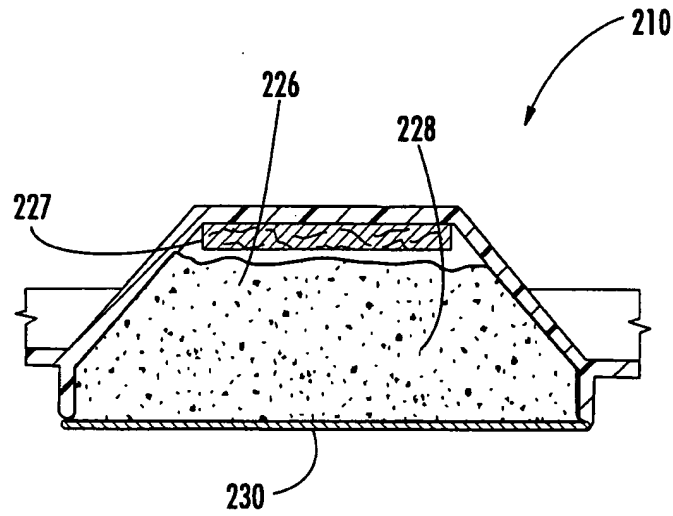


FIG. 5.

OK. To ENTER. LRB  
3/31/06